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THIS DISPOSITION IS NOT
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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Clint Eastwood

Serial No. 75/272,584

J. Michael Cleary and Scott J. Major of Cleary & Komen, LLP
for Clint Eastwood.

Steven Fine, Trademark Examining Attorney, Law Office 107
(Thomas Lamone, Managing Attorney).

Before Cissel, Walters and Chapman, Administrative
Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

Clint Eastwood has filed an application to register
the mark TEHAMA on the Principal Register for "musical
sound recordings, namely, pre-recorded phonograph records,
audio tapes and compact discs; and musical video
recordings" in International Class 9; "watches" in
International Class 14; "handbags" in International Class
18; and "men's, women's and children's apparel, namely,

shirts, jackets, sweaters, sweatshirts, t-shirts and sweatpants" in International Class 25.¹

Registration has been finally refused under Section 2(e)(2) of the Trademark Act on the basis that applicant's mark is primarily geographically descriptive of applicant's goods.

Applicant has appealed. Both applicant and the Examining Attorney submitted briefs, and both appeared at an oral hearing before the Board. We reverse.

The Examining Attorney first refused registration stating that the primary significance of the term TEHAMA is geographic and that because applicant's goods would come from the geographical place named², a public association with the place named will be presumed.

Applicant pointed out that the Examining Attorney had submitted no evidence in support of the refusal to register; and while applicant acknowledged the word TEHAMA is the name of a town and a county in rural California, the geographical places in question are remote and obscure and therefore TEHAMA is not a primarily geographical term. As

¹ Application Serial No. 75/272,584, filed April 10, 1997, based on applicant's assertion of a bona fide intent to use the mark in commerce.

² Apparently the Examining Attorney based this conclusion on the fact that applicant's address is listed in the application as "Tehama, California."

evidence thereof, applicant submitted information from the website of the California Department of Finance showing Tehama County is a large geographical area (almost 2 million acres) with a very small total population of 54,400 people, and the town of Tehama has a population of 430. Regarding the goods/place association, applicant contends that this evidence also shows that Tehama County is principally known for agricultural and lumber production, thus negating any association of the area with the production of any of applicant's involved goods.

In response the Examining Attorney acknowledged that because of applicant's evidence, the Examining Attorney must provide evidence of a goods/place association. He submitted as evidence the following material: (i) a story reprinted from the Nexis database from the September 22, 1995 Sacramento Bee indicating that Tehama County residents had filed suit against both an upscale residential project adjacent to a planned multi-billion dollar country-music theme park to be called "Celebrity City" consisting of 3,800 acres and hoping to attract ten million visitors per year, and against the theme park itself; (ii) a printout of one page from the TGIFDirectory about Celebrity City, and referring to the new city having recording studios, film

studios and video production studios; and (iii) a printout from Patent and Trademark Office records on application Serial No. 74/577,750 owned by Celebrity City of California, Ltd., for the mark CELEBRITY CITY for a variety of goods and services, including, entertainment services in the nature of live country-western music theaters, retail shops featuring, inter alia, audio and video products, real estate management services and real estate development services.³

Applicant submitted with his brief on appeal, with the consent of the Examining Attorney, an entry from The Columbia Gazetteer showing the populations of Tehama and Tehama County as well as the notable industries found in Tehama County.⁴ Applicant argues that the Examining Attorney has established neither that the term TEHAMA is primarily geographical nor that there is a goods/place association. Specifically, applicant contends that the town and county named "Tehama" are remote locations in rural California, sparsely populated, and will be unfamiliar to most purchasers of the involved consumer

³ The records of this Office indicate that on November 30, 1999 the application Serial No. 74/577,750 issued as Registration No. 2,296,238 for real estate development services.

⁴ Inasmuch as the Examining Attorney consents thereto, we have considered the new evidence submitted by applicant with his brief.

goods; that the "overall look and cadence" (brief, p. 4) of the term TEHAMA would lead purchasers to perceive the mark as fanciful or as an arbitrary term of Native American derivation; and that the Examining Attorney's evidence of possible future development of a theme park in Tehama County is not relevant to prove that the term TEHAMA is currently primarily geographically descriptive of the goods set forth in the application to purchasers.

The Examining Attorney argues that "Tehama" is not so obscure or remote as to be an "insular place" (brief, p. 2), rather the Tehama County Visitor's Bureau has a website on which it boasts that Tehama is a vacation and tourist area⁵; that even if the term does sound like a Native American word, applicant has pointed to no specific non-geographic meaning of the term; and that consumers would expect an area which promotes itself as a vacation spot to place its name on a variety of consumer goods, such as musical recordings, watches, handbags, and clothing. The Examining Attorney concedes that the "Celebrity City" project "may never in fact be completed...but an equally

⁵ The Examining Attorney attached a reprint of one page from this website with his brief. Inasmuch as applicant treated this untimely evidence as of record (arguing that there is no indication of the level of traffic to said website, and thus it cannot be used to establish public awareness), the Board has considered this webpage, for whatever probative value, if any, it may have. See Trademark Rule 2.142(d).

likely prospect is that the applicant will use TEHAMA on musical sound recordings concurrently with the completed construction of a highly popular country western theme park in Tehama County that features recording studios." (Brief, p. 3).

Our primary reviewing Court has set forth a two-part test for determining whether a term is primarily geographically descriptive. See *In re Societe General des Eaux Minerals de Vittel S.A.*, 824 F.2d 957, 3 USPQ2d 1450, 1452 (Fed. Cir. 1987):

"[A] prima facie case of unregistrability cannot be made out simply by evidence showing that the mark sought to be registered is the name of a place known generally to the public; it is also necessary to show that the public would make a goods/place association, i.e., believe that the goods for which the mark is sought to be registered originate in that place."

See also, *In re Jacques Bernier Inc.*, 894 F.2d 389, 13 USPQ2d 1725 (Fed. Cir. 1990); and *In re Gale Hayman Inc.*, 15 USPQ2d 1478 (TTAB 1990).

In the case of *World Carpets, Inc. v. Dick Littrell's New World Carpets*, 438 F.2d 482, 168 USPQ 609 (5th Cir. 1971), the Court stated the following with reference to the Trademark Act: "The word 'primarily' should not be overlooked, for it is not the intent of the federal statute

to refuse registration of a mark where the geographic meaning is minor, obscure, remote or unconnected with the goods." See also, 2 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, §14:27 (4th Ed. 1999).

Certainly the record shows, and applicant acknowledges, that "Tehama" is the name of both a town and a county in California. Thus, it is a geographical term. However, the question remains, is it "primarily" a geographical term, and would the public make a goods/place association. We think not because the geographical meaning of the term is minor and obscure, and there is no evidence of any association between "Tehama" (the town or the county) and applicant's goods (musical recordings, watches, handbags, and/or clothing). See *In re MCO Properties Inc.*, 38 USPQ2d 1154 (TTAB 1995); and *In re House of Windsor, Inc.*, 221 USPQ 53 (TTAB 1983). Specifically, the record establishes that Tehama County (located 120 miles north of Sacramento) is generally rural in nature (with an agricultural and lumber economy), and that the town of "Tehama" itself is extremely small with a population of only 430. There is no evidence indicating that the general public would understand TEHAMA as an indicator of geographic origin or that they would be aware of the geographic town or county named "Tehama."

Further, the Examining Attorney has failed to present evidence showing that the public associates Tehama, California with any of the goods involved herein. His evidence relating to a possible future development under the name "Celebrity City" is not persuasive of the primary significance, at this point in time, to consumers encountering the term TEHAMA on or in connection with applicant's goods. Importantly, even the Examining Attorney acknowledged that the planned development may never be built.

The mere fact that recordings, watches, handbags, and clothing may be and probably are offered for sale in Tehama, California (as in almost all towns) is simply not sufficient to establish the requisite goods/place association. Tehama itself would have to be associated with the involved products in such a way that the consuming public would be likely to assume that Tehama was the place in which the recordings, watches, handbags and clothing originated. Nothing in the record establishes or even suggests that purchasers would believe that Tehama would be the place of origin of these goods. See *In re John Harvey & Sons Ltd.*, 32 USPQ2d 1451 (TTAB 1994) (the mark HARVEYS BRISTOL CREAM for cakes held not primarily geographically descriptive); *In re Municipal Capital Markets Corp.*, 51

USPQ2d 1369 (TTAB 1999) (the mark COOPERSTOWN for restaurant services held not primarily geographically deceptively misdescriptive); and In re Dixie Insurance Company, 223 USPQ 514 (TTAB 1984) (the mark DIXIE for property and casualty underwriting services held not primarily geographically descriptive). Cf. In re California Pizza Kitchen Inc., 10 USPQ2d 1704 (TTAB 1988) (the primary significance of the term "California" in the mark CALIFORNIA PIZZA KITCHEN for restaurant services held geographical - the terms PIZZA KITCHEN were disclaimed); In re Opryland USA Inc., 1 USPQ2d 1409 (TTAB 1986) (the primary significance of the term "Nashville" in the mark THE NASHVILLE NETWORK for television program production services and distribution of television programming to cable television systems held geographical); and In re The Cookie Kitchen, Inc., 228 USPQ 873 (TTAB 1986) (the primary significance of the term MANHATTAN for cookies held geographical).

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Decision: The refusal to register under Section
2(e)(2) is reversed.

R. F. Cissel

C. E. Walters

B. A. Chapman
Administrative Trademark Judges,
Trademark Trial and Appeal Board